

the petition. In cases in which the district director does not consent to the withdrawal, the court shall determine the petition on its merits.

(b) At the final hearing upon a petition for naturalization which the petitioner has failed to prosecute, the officer in attendance shall inform the court whether the district director consents to dismissal of the petition for lack of prosecution. In cases in which the district director does not move that the petition be dismissed for lack of prosecution, the court shall determine the petition on its merits.

[22 FR 9819, Dec. 6, 1957, as amended at 56 FR 50496, Oct. 7, 1991]

PART 335—EXAMINATION ON APPLICATION FOR NATURALIZATION

Sec.

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AUTHORITY: 8 U.S.C. 1103, 1443, 1447.

§ 335.1 Investigation of applicant.

Subsequent to the filing of an application for naturalization, the Service shall conduct an investigation of the applicant. The investigation shall consist, at a minimum, of a review of all pertinent records, police department checks, and a neighborhood investigation in the vicinities where the applicant has resided and has been employed, or engaged in business, for at least the five years immediately preceding the filing of the application. The district director may waive the

neighborhood investigation of the applicant provided for in this paragraph.

[56 FR 50497, Oct. 7, 1991]

§ 335.2 Examination of applicant.

(a) *General.* Subsequent to the filing of an application for naturalization, each applicant shall appear in person before a Service officer designated to conduct examinations pursuant to § 332.1 of this chapter. The examination shall be uniform throughout the United States and shall encompass all factors relating to the applicant's eligibility for naturalization. The applicant may request the presence of an attorney or representative who has filed an appearance in accordance with part 292 of this chapter.

(b) *Completion of criminal background checks before examination.* The Service will notify applicants for naturalization to appear before a Service officer for initial examination on the naturalization application only after the Service has received a definitive response from the Federal Bureau of Investigation that a full criminal background check of an applicant has been completed. A definitive response that a full criminal background check on an applicant has been completed includes:

(1) Confirmation from the Federal Bureau of Investigation that an applicant does not have an administrative or a criminal record;

(2) Confirmation from the Federal Bureau of Investigation that an applicant has an administrative or a criminal record; or

(3) Confirmation from the Federal Bureau of Investigation that two properly prepared fingerprint cards (Form FD-258) have been determined unclassifiable for the purpose of conducting a criminal background check and have been rejected.

(c) *Procedure.* Prior to the beginning of the examination, the Service officer shall make known to the applicant the official capacity in which the officer is conducting the examination. The applicant shall be questioned, under oath or affirmation, in a setting apart from the public. Whenever necessary, the examining officer shall correct written answers in the application for naturalization to conform to the oral statements made under oath or affirmation. The

Service officer shall maintain, for the record, brief notations of the examination for naturalization. At a minimum, the notations shall include a record of the test administered to the applicant on English literacy and basic knowledge of the history and government of the United States. The Service officer may have a stenographic, mechanical, electronic, or videotaped transcript made, or may prepare an affidavit covering the testimony of the applicant. The questions to the applicant shall be repeated in different form and elaborated, if necessary, until the officer conducting the examination is satisfied that the applicant either fully understands the questions or is unable to understand English. The applicant and the Service shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(d) *Witnesses.* Witnesses, if called, shall be questioned under oath or affirmation to discover their own credibility and competency, as well as the extent of their personal knowledge of the applicant and his or her qualifications to become a naturalized citizen.

(1) *Issuance of subpoenas.* Subpoenas requiring the attendance of witnesses or the production of documentary evidence, or both, may be issued by the examining officer upon his or her own volition, or upon written request of the applicant or his or her attorney or representative. Such written request shall specify, as nearly as possible, the relevance, materiality, and scope of the testimony or documentary evidence sought and must show affirmatively that the testimony or documentary evidence cannot otherwise be produced. The examining officer shall document in the record his or her refusal to issue a subpoena at the request of the applicant.

(2) *Service of subpoenas.* Subpoenas shall be issued on Form I-138, and a record shall be made of service. The subpoena may be served by any person over 18 years of age, not a party to the case, designated to make such service by the district director.

(3) *Witness fees.* Mileage and fees for witnesses subpoenaed under this section shall be paid by the party at

whose instance the subpoena is issued, at rates allowed and under conditions prescribed by the Service. Before issuing a subpoena, the officer may require the deposit of an amount adequate to cover the fees and mileage involved.

(4) *Failure to appear.* If the witness subpoenaed neglects or refuses to testify or to produce documentary evidence as directed by the subpoena, the district director shall request that the United States Attorney for the proper district report such neglect or refusal to any District Court of the United States, and file a motion in such court for an order directing the witness to appear and to testify and produce the documentary evidence described in the subpoena.

(5) *Extraterritorial testimony.* The testimony of a witness may be taken outside the United States. The witness's name and address shall be sent to the Service office abroad which has jurisdiction over the witness's residence. The officer taking the statement shall be given express instructions regarding any aspect of the case which may require special development or emphasis during the interrogation of the witness.

(e) *Record of examination.* At the conclusion of the examination, all corrections made on the application form and all supplemental material shall be consecutively numbered and listed in the space provided on the applicant's affidavit contained in the application form. The affidavit must then be subscribed and sworn to, or affirmed, by the applicant and signed by the Service officer. The affidavit shall be executed under the following oath (or affirmation): "I swear (affirm) and certify under penalty of perjury under the laws of the United States of America that I know that the contents of this application for naturalization subscribed by me, and the evidence submitted with it, are true and correct to the best of my knowledge and belief." Evidence received by the officer shall be placed into the record for determination of the case. All documentary or written evidence shall be properly identified and introduced into the record as exhibits by number, unless read into the record. A deposition or

statement taken by a Service officer during the initial examination or any subsequent examination shall be included as part of the record on the application.

(f) *Use of interpreter.* If the use of an interpreter is authorized pursuant to §312.4 of this chapter, the examining officer shall note on the application the use and identity of any interpreter. If the Service officer is proficient in the applicant's native language, the Service officer may conduct the examination in that language with the consent of the applicant.

[56 FR 50497, Oct. 7, 1991, as amended at 58 FR 49913, Sept. 24, 1993; 63 FR 12987, 12988, Mar. 17, 1998]

§335.3 Determination on application; continuance of examination.

(a) The Service officer shall grant the application if the applicant has complied with all requirements for naturalization under this chapter. A decision to grant or deny the application shall be made at the time of the initial examination or within 120-days after the date of the initial examination of the applicant for naturalization under §335.2. The applicant shall be notified that the application has been granted or denied and, if the application has been granted, of the procedures to be followed for the administration of the oath of allegiance pursuant to part 337 of this chapter.

(b) Rather than make a determination on the application, the Service officer may continue the initial examination on an application for one reexamination, to afford the applicant an opportunity to overcome deficiencies on the application that may arise during the examination. The officer must inform the applicant in writing of the grounds to be overcome or the evidence to be submitted. The applicant shall not be required to appear for a reexamination earlier than 60 days after the first examination. However, the reexamination on the continued case shall be scheduled within the 120-day period after the initial examination, except as otherwise provided under §312.5(b) of this chapter. If the applicant is unable to overcome the deficiencies in the ap-

plication, the application shall be denied pursuant to §336.1 of this chapter.

[56 FR 50497, Oct. 7, 1991, as amended at 58 FR 49914, Sept. 24, 1993]

§335.4 Use of record of examination.

In the event that an application is denied, the record of the examination on the application for naturalization, including the executed and corrected application form and supplements, affidavits, transcripts of testimony, documents, and other evidence, shall be submitted to the Service officer designated in §332.1 of this chapter to conduct hearings on denials of applications for naturalization in accordance with part 336 of this chapter. The record of the examination shall be used for examining the petitioner and witnesses, if required to properly dispose of issues raised in the matter.

[56 FR 50498, Oct. 7, 1991]

§335.5 Receipt of derogatory information after grant.

In the event that the Service receives derogatory information concerning an applicant whose application has already been granted as provided in §335.3(a) of this chapter, but who has not yet taken the oath of allegiance as provided in part 337 of this chapter, the Service shall remove the applicant's name from any list of granted applications or of applicants scheduled for administration of the oath of allegiance, until such time as the matter can be resolved. The Service shall notify the applicant in writing of the receipt of the specific derogatory information, with a motion to reopen the previously adjudicated application, giving the applicant 15 days to respond. If the applicant overcomes the derogatory information, the application will be granted and the applicant will be scheduled for administration of the oath of allegiance. Otherwise the motion to reopen will be granted and the application will be denied pursuant to §336.1 of this chapter.

[56 FR 50498, Oct. 7, 1991, as amended at 58 FR 49914, Sept. 24, 1993]

§ 335.6 Failure to appear for examination.

(a) An applicant for naturalization shall be deemed to have abandoned his or her application if he or she fails to appear for the examination pursuant to § 335.3 and fails to notify the Service of the reason for non-appearance within 30 days of the scheduled examination. Such notification shall be in writing and contain a request for rescheduling of the examination. In the absence of a timely notification, the Service may administratively close the application without making a decision on the merits.

(b) An applicant may reopen an administratively closed application by submitting a written request to the Service within one (1) year from the date the application was closed. Such reopening shall be without additional fee. The date of the request for reopening shall be the date of filing of the application for purposes of determining eligibility for naturalization.

(c) If the applicant does not request reopening of an administratively closed application within one year from the date the application was closed, the Service will consider that application to have been abandoned, and shall dismiss the application without further notice to the applicant.

[58 FR 49914, Sept. 24, 1993, as amended at 60 FR 6651, Feb. 3, 1995]

§ 335.7 Failure to prosecute application after initial examination.

An applicant for naturalization who has appeared for the examination on his or her application as provided in § 335.2 shall be considered as failing to prosecute such application if he or she, without good cause being shown, either failed to excuse an absence from a subsequently required appearance, or fails to provide within a reasonable period of time such documents, information, or testimony deemed by the Service to be necessary to establish his or her eligibility for naturalization. The Service shall deliver notice of all such requests for appearance or supporting evidence, in writing, to the applicant either in person or to the applicant's last known address. In the event that the applicant fails to respond within 30 days of the date of notification, the Service shall

adjudicate the application on the merits pursuant to § 336.1 of this chapter.

[58 FR 49914, Sept. 24, 1993, as amended at 60 FR 6651, Feb. 3, 1995]

§ 335.8 [Reserved]

§ 335.9 Transfer of application.

(a) *Request for transfer of application.* An applicant who, after filing an application for naturalization, changes residence, or plans to change residence within three months, may request, in writing, that a pending application be transferred from the current Service office to the Service office having jurisdiction over the applicant's new place of residence. The request shall be submitted to the office where the application was originally filed. The request shall include the applicant's name, alien registration number, date of birth, complete current address including name of the county, complete address at the time of filing the application, reason for the request to transfer the application, and the date the applicant moved or intends to move to the new jurisdiction.

(b) *Discretion to authorize transfer.* The district director may authorize the transfer of an application for naturalization after such application has been filed. In the event that the district director does not consent to the transfer of the application, the application shall be adjudicated on its merits by the Service office retaining jurisdiction. If upon such adjudication the application is denied, the written decision pursuant to § 336.1 of this chapter shall also address the reason(s) for the Service's decision not to consent to the transfer request.

[56 FR 50498, Oct. 7, 1991, as amended at 58 FR 49914, Sept. 24, 1993]

§ 335.10 Withdrawal of application.

An applicant may request, in writing, that his or her application, filed with the Service, be withdrawn. If the district director consents to the withdrawal, the application will be denied without further notice to the applicant and without prejudice to any future application. The withdrawal by the applicant will constitute a waiver of any review pursuant to part 336 of this chapter. If the district director does not

consent to the withdrawal, the application for naturalization shall be adjudicated on its merits.

[56 FR 50498, Oct. 7, 1991]

§ 335.11 Preliminary examinations on petitions for naturalization filed prior to October 1, 1991.

(a) *When held.* Continued preliminary examinations shall be held on petitions for naturalization filed prior to October 1, 1991 when it is determined that further testimony is needed for the designated examiner to prepare a recommendation to the court consistent with § 335.12. The examinations shall be open to the public.

(b) *Conduct of examination.* Preliminary examinations shall be held before an employee of the Service designated by the district director to conduct such proceedings and to make findings and recommendations thereon to the naturalization court, who shall be known as the "designated examiner." The petitioner and his or her witnesses and the witnesses produced on behalf of the Government shall be present. The designated examiner shall, prior to the commencement of the examination, make known to the petitioner his or her official capacity and that of any other officer of the Service who may participate in the proceeding. The designated examiner shall have before him or her the entire record of the preliminary interrogation, including the petitioner's application to file a petition for naturalization (Form N-400) and any other evidence or data that may be relevant or material to the inquiry. All testimony taken at the examination shall be under oath or affirmation administered by the designated examiner. The designated examiner may interrogate the petitioner and witnesses produced in behalf of the petitioner or the Government, and present evidence touching upon the petitioner's admissibility to citizenship. He shall regulate the course of the examination, rule upon applications for the issuance of subpoenas and issue such subpoenas in proper cases, grant or deny continuances, and rule on all objections to the introduction of evidence, which rulings shall be entered on the record. Evidence held by the designated examiner to be inadmissible shall nevertheless be

received into the record subject to the ruling of the court. The petitioner and the Government shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. If the petitioner is not represented by an attorney or representative, the designated examiner shall assist the petitioner in the introduction of all evidence available in his or her behalf. All documentary or written evidence shall be properly identified and introduced into the record as exhibits by number, unless read into the record.

(c) *Assignment of examining officer at preliminary examination.* The district director may in his or her discretion assign an employee of the Service to act as examining officer at the preliminary examination. Such employee shall examine and cross-examine witnesses produced in behalf of the Government or the petitioner and present evidence pertinent to the petitioner's admissibility to citizenship. The designated examiner may take such part in the interrogation of the petitioner and witnesses and the introduction of evidence as he or she may deem necessary.

(d) *Stenographic reporting of proceedings; mechanical recording equipment.* A stenographer shall be in attendance whenever, in the opinion of the designated examiner, such attendance is desirable, and in every case to which an examining officer is assigned. The stenographer shall record verbatim the entire proceedings, including the oaths administered and rulings on objections, but shall not record arguments in support of objections, or statements made off the record with the consent of the petitioner. The stenographer shall certify that the transcribed minutes constitute a complete and accurate record of the examination. Whenever, in the opinion of the designated examiner the use of mechanical recording equipment in lieu of a stenographer is deemed desirable, the proceedings may be recorded by such equipment.

(e) *Issuance of subpoenas; attendance and mileage fees.* Subpenas requiring the attendance of witnesses or the production of documentary evidence, or both, may be issued by the designated examiner, upon his or her own volition

or upon written application of the petitioner or his or her attorney or representative, the examining officer, or the Service. Such written application shall specify, as nearly as may be, the relevance, materiality, and scope of the testimony or documentary evidence sought and show affirmatively that the testimony or documentary evidence cannot otherwise be produced. Subpoenas shall be issued on Form I-138 and due record shall be made of their service. The subpoena may be served by any person over 18 years of age, not a party to the case, designated to make such service by the district director. Mileage and fees for witnesses subpoenaed under this section shall be paid by the party at whose instance the subpoena is issued at rates allowed and under conditions prescribed by the naturalization court in which the petition is pending. Before issuing a subpoena the designated examiner may require a deposit of an amount adequate to cover the fees and mileage involved. If the witness subpoenaed neglects or refuses to testify or produce documentary evidence as directed by the subpoena, the district director shall request the United States Attorney for the proper district to report such neglect or refusal to any court exercising naturalization jurisdiction and to file a motion in such court for an order directing the witness to appear and testify and to produce the documentary evidence described in the subpoena.

(f) *Briefs.* At the conclusion of the preliminary examination the petitioner or his or her attorney or representative, and the examining officer if one was assigned, may submit briefs in support of arguments made or issues raised at the examination.

(g) *Representation by attorney or representative; absence of representative; advice to petitioner.* The petitioner may be represented by an attorney or representative who has filed an appearance in accordance with part 292 of this chapter. If at any stage of the preliminary examination it appears to the designated examiner that he or she may recommend denial of the petition, or granting thereof with the facts to be presented to the court, he or she shall advise the petitioner of his or her right to be represented by an attorney or

representative. A continuance of the examination shall be granted upon the petitioner's motion for the purpose of obtaining an attorney or representative. The petitioner's attorney or a representative shall be permitted to be present at all times during the preliminary examination or at any subsequent examinations and the petitioner shall not in any such examination or subsequent examinations be interrogated in the absence of his or her attorney or representative, unless the petitioner waives such appearance. The attorney or a representative shall be permitted to offer evidence to meet any evidence presented or adduced by the Government or the designated examiner. A petitioner who is not represented by an attorney or a representative shall be entitled to all the benefits and the privileges provided for in this section.

[22 FR 9821, Dec. 6, 1957, as amended at 23 FR 2673, Apr. 23, 1958; 45 FR 83195, Dec. 18, 1980; 46 FR 5861, Jan. 21, 1981; 47 FR 10778, Mar. 12, 1982; 56 FR 50498, Oct. 7, 1991]

§ 335.12 Recommendations on petitions for naturalization of the designated examiner and regional administrator; notice.

As soon as practicable after conclusion of the preliminary examination on a petition for naturalization filed prior to October 1, 1991, the designated examiner shall prepare an appropriate recommendation to the court. If the recommendation is for denial, or for granting with the facts to be presented to the court, the designated examiner shall prepare a memorandum summarizing the evidence, and setting forth findings of fact and conclusions of law, and his or her recommendation. No evidence dehors the record or evidence not admissible in judicial proceedings under recognized rules of evidence shall be considered in the preparation of the memorandum. The memorandum shall be submitted before final hearing to the regional operations liaison officer, in those cases or classes of cases designated by him or her, for review and recommendation. If the regional operations liaison officer does not agree with the recommendation of the designated examiner, he or she shall prepare an appropriate memorandum, with findings of fact, conclusions of

law, and the recommendation of the Service, subject to review and approval by the Commissioner in those cases or classes of cases designated by him or her, for presentation to the court with the designated examiner's memorandum. In the preparation of memoranda, designated examiners and regional operations liaison officers shall be bound by the interpretations and rulings by the Attorney General or the Commissioner on Questions of law.

[38 FR 29878, Oct. 30, 1973, as amended at 56 FR 50498, Oct. 7, 1991]

§ 335.13 Notice of recommendation on petitions for naturalization of designated examiner.

(a) *Recommendation that petition be denied.* When the designated examiner proposes to recommend denial of the petition filed prior to October 1, 1991, the petitioner or his or her attorney or representative shall be notified thereof and furnished a copy of the designated examiner's memorandum. The notice shall be given in conjunction with notification of the date, place, and time of holding the final hearing. The notice shall be sent by certified mail, with return receipt requested, after any review made by the regional administrator.

(b) *Recommendation that petition be granted.* When the designated examiner proposes to recommend granting of the petition filed prior to October 1, 1991 and to present the facts and issues to the court, the petitioner or his or her attorney or representative shall be notified of the recommendation and furnished a copy of the designated examiner's memorandum prior to the date of the hearing, and after any review made by the regional administrator.

(c) *Disagreement between recommendations of designated examiner and the regional administrator.* In those cases reviewed by the regional administrator in which his or her views and recommendations do not agree with those of the designated examiner, the notice required by paragraphs (a) and (b) of this section shall also advise the petitioner of the recommendation of the regional administrator and that both recommendations will be presented to the court. There shall also be enclosed

with such notice a copy of the regional administrator's memorandum.

(d) *Briefs.* If the petitioner intends to file a brief or memorandum at the final hearing, he or she shall furnish a copy thereof to the Service office from which the notice on Form N-425 emanated at least 5 days prior to the date of the final hearing. Failure to do so will result in a motion for a continuance if deemed essential for the proper presentation of the Government's case.

[22 FR 9822, Dec. 6, 1957, as amended at 35 FR 17530, Nov. 14, 1970; 56 FR 50498, Oct. 7, 1991]

PART 336—HEARINGS ON DENIALS OF APPLICATIONS FOR NATURALIZATION

Sec.

336.1 Denial after section 335 examination.

336.2 Hearing before an immigration officer.

336.3-336.8 [Reserved]

336.9 Judicial review of denial determinations on applications for naturalization.

AUTHORITY: 8 U.S.C. 1103, 1443, 1447, 1448.

SOURCE: 56 FR 50499, Oct. 7, 1991, unless otherwise noted.

§ 336.1 Denial after section 335 examination.

(a) After completing all examination procedures contained in part 335 of this chapter and determining to deny an application for naturalization, the Service shall serve a written notice of denial upon an applicant for naturalization no later than 120 days after the date of the applicant's first examination on the application.

(b) A notice of denial shall be prepared in a written, narrative format, and shall recite, in clear concise language, the pertinent facts upon which the determination was based, the specific legal section or sections applicable to the finding of ineligibility, and the conclusions of law reached by the examining officer in rendering the decision. Such notice of denial shall also contain a specific statement of the applicant's right either to accept the determination of the examining officer, or request a hearing before an immigration officer.

(c) Service of the notice of denial may be made in person or by certified